

MASS. SS8.2:G94

UMASS/AMHERST



312066016599263

GUIDELINES FOR THE NOTARY PUBLIC

GOVERNMENT DOCUMENTS
COLLECTION

AUG 03 1998

of Massachusetts
Copy



Published by
William Francis Galvin
Secretary of the Commonwealth
Public Records Division

updated 5/96



Most of us have had to utilize the services of a notary public at least once in our lives. But, what is a notary public? What are his or her functions and legal responsibilities?

The Secretary of the Commonwealth is pleased to publish this guide explaining the role of the notary public in Massachusetts. It contains definitions of many of the most common terms used in notarial work, as well as several examples of situations in which notarization questions could arise.

"Guidelines for the Notary Public" covers a wide spectrum of important issues, and I am sure that it will serve you well as a concise and excellent source of reference.

Sincerely,

A handwritten signature in cursive script that reads "William Francis Galvin".

William Francis Galvin

Secretary of the Commonwealth

WHAT IS A NOTARY PUBLIC? • A notary public is a public officer appointed by the governor, with the advice and consent of the Governor's Council. Notaries public serve for seven (7) years from the date of their appointment, unless removed earlier by the governor with the consent of the Governor's Council.

WHAT ARE THE SPECIFIC POWERS AND DUTIES OF A MASSACHUSETTS NOTARY? • Massachusetts notaries are empowered to: administer oaths and affirmations; take acknowledgments, affidavits and depositions; issue subpoenas; protest commercial pa-

pers; and in certain circumstances may be required to be present at the removal of the contents of bank safe deposit boxes and to seal and list their contents. A Massachusetts notary may witness documents for use in other states and nations provided the notary is physically in Massachusetts when performing the notarial act. A notary public is a public servant, obligated to fulfill the needs of the general public whenever possible.

WHAT IS THE DIFFERENCE BETWEEN AN OATH AND AN AFFIRMATION?

• Oaths and affirmations are pledges sworn to before a notary public attesting to the truth of a given statement. The effect of an oath and an affirmation is the same; both put the burden of responsibility for the veracity of the statements on the party subscribing to the document. The difference, however, is that an oath calls upon God as a witness while an affirmation is made under the penalties of perjury. Examples of an oath and affirmation are as follows:

Oath: Do you solemnly swear that the statements contained herein are true, so help you God?

Affirmation: Do you solemnly affirm, under the penalties of perjury, that the statements made herein are true?

WHAT DO I WRITE ON THE DOCUMENT AFTER THE OATH OR AFFIRMATION IS ADMINISTERED?

• After administering an oath or affirmation, the notary completes a statement on the document, stating that the individual signed and swore or affirmed to the statements in the notary's presence. Additionally, the notary provides the particulars of his or her commission. This certificate is often called the testimonium clause or jurat. When taking an acknowledgment of any instrument required to be recorded or filed in a proceeding in the probate court, a notary must print or type his/her name directly below his/her signature and state the date of expiration of his/her commission. If the certificate is not included on the document, the notary may create one. The following is a typical testimonium clause or jurat.

As subscribed and sworn to before me on
(date)

(signature), Notary Public

(print name)

My commission expires: (____/ ____/ ____)

(optional notarial seal)

WHAT IS AN AFFIDAVIT? • An affidavit is a printed or written declaration of facts confirmed in the oath or affirmation. It is advisable to seek legal assistance in the preparation of an affidavit as the required form may vary depending on the nature of proceedings. The notary should, however, insure that the four following essential components are present:

1. *Statement of Venue*; indicates the state and county where the affidavit was taken.

Massachusetts notaries public are authorized to act only within the confines of the Commonwealth; therefore, it is imperative that this be completed properly. The statement of venue should read as follows:

Commonwealth of Massachusetts
(county), ss.

If the document is to be used outside of the United States, the words "United States" would be written first. The letters "ss" which follow the county are commonly translated as "to-wit" and are a mere formality.

2. *Body*; contains a written statement stating the facts that are being sworn to by the individual.
3. *Signature*; the individual must sign the affidavit in the presence of the notary after swearing to the oath or affirmation.
4. *Jurat*; see prior example.

WHAT IS AN ACKNOWLEDGMENT? • An acknowledgment is generally required for recording documents. It furnishes a formal statement that at the time the signer executed the instrument he or she did so freely. The difference between an oath and an acknowledgment is that the signer is not swearing to the truth of the statement but is only acknowledging that it was signed by him/her under his/her own volition. As with the affidavit, the notary should seek legal assistance when drafting the acknowledgment certificate. However, the notary should check for the following components:

1. The statement of venue.
2. The date of the acknowledgment.
3. The name, title and jurisdiction of the notary.
4. The full names of all signers.
5. Identification of all signers.
6. A statement indicating that signers were present.

7. A statement by the signer(s) that this is a voluntary act.
8. The jurat.

WHAT IS A NOTARY'S FUNCTION IN PROTESTING COMMERCIAL PAPER? • A protest is a certificate of dishonor made under the hand and seal of certain individuals, including notaries, who are authorized to certify dishonor. The need to protest commercial paper was greatly diminished by the Uniform Commercial Code (UCC) which became effective in Massachusetts on October 1, 1958. Occasionally, however, it is still necessary for a notary to perform this highly technical service. For specific instructions on the correct procedure for protest, notaries should refer to G.L. c. 106, §§3-509 (1986 ed.).

MAY A NOTARY TAKE A DEPOSITION? • Yes, notaries public are authorized to take a deposition. When a notary is called upon to do this, the proper procedure can be found in Rules 27 through 33 of the Massachusetts Rules of Civil Procedure. He/she should review to ensure the procedure is proper.

WHEN MUST MY NOTARIAL SIGNATURE BE CERTIFIED? • When a notarized document is sent to another state or country, the recipient often requires proof that the person had the authority to act as a notary at the time he signed as a notary. Consuls of foreign countries require that this proof be under the seal of the state. This process, called either certification, authentication or legalization, is performed in Massachusetts by the Massachusetts Secretary of the Commonwealth. Some notaries also choose to be on file at the office of the clerk of Superior Court in the county where they reside. If the document has been authenticated by the clerk of Superior Court, however, it is usually necessary for the Massachusetts Secretary of the Commonwealth to then authenticate the signature of the clerk. Occasionally, a Consul will ask specifically that an apostille be attached to the notarized document. An apostille is simply a certain form of authentication required by some countries.

MAY I NOTARIZE A DOCUMENT WRITTEN IN A FOREIGN LANGUAGE? • There is no law which says you can not notarize a document written in a foreign language. However, there are numerous potential problems including the fact that the term "notary public," when translated into other languages, can refer to a markedly different office, imbued with far

greater authority than in the United States. For example, "Notario Publico," in Spanish speaking countries, refers to a person with authority similar to that of a U.S. attorney. A notary who has questions about a document written in another language is encouraged to find another notary who understands the document (perhaps at a consulate).

WHAT IF THE PERSON FOR WHOM THE NOTARIAL ACT IS BEING PERFORMED CAN NOT SIGN HIS OR HER OWN NAME?

• If the person's inability to subscribe a full name is due to illiteracy or a physical handicap, and the notary is confident that the subscriber is fully aware of the implications of the document, then the notary may proceed with the person's mark. If there is any question of the mental competence of the party requesting the notarization, a notary without legal training should always obtain legal advice before proceeding.

SHOULD A NOTARY KEEP A RECORD OF EACH NOTARIAL ACT?

• Massachusetts notaries are not required to keep a register of all official acts. Such a register, however, is useful to refresh the memory of a notary called to testify in a legal proceeding.

IS A NOTARY LIABLE FOR NEGLIGENCE OR MISCONDUCT?

• Yes, notaries are liable to all persons injured for all damages sustained when notarial duties are not performed with reasonable care. For notaries, it is particularly important to perform three steps meticulously to avoid liability:

1. Notaries should always require document signers to appear before them personally at the time of the notarization.
2. Notaries should positively identify all document signers.
3. The notary should be certain that the document is complete before performing a notarial act.

WHAT FEES MAY A NOTARY LEGALLY

CHARGE? • According to their fee statute [M.G.L. c.262, §41 (1986 ed.)], notaries public may charge no more than one dollar and twenty-five cents (\$1.25) for noting and recording a document and no more than two dollars (\$2.00) for protesting commercial paper. As a notary, you are a public servant and should be available to perform a public service at a

reasonable cost. Excessive charges could result in complaints to the Governor's Council.

ARE NOTARIES RESTRICTED TO A COUNTY? •

No. Massachusetts notaries may exercise their notarial authority anywhere within the Commonwealth.

MAY I NOTARIZE MY OWN DOCUMENT? •

Since a notary must always be an objective witness, the Secretary of the Commonwealth strongly recommends that you never act as a notary on your own behalf or in a matter in which you have a personal or familial interest.

IS A NOTARIAL SEAL NECESSARY? •

Massachusetts law does not specifically require that a notary use a seal. Because many other states and foreign nations require that a seal be affixed to certain documents, however, it is strongly suggested that all notaries use a seal.

WHERE MAY A NOTARY OBTAIN A SEAL? •

Seals may be purchased from stationers and tool-and-die makers. The Commonwealth of Massachusetts does not offer notarial seals for sale nor does the Secretary endorse any specific vendor.

WHAT HAPPENS IF I MOVE OUT OF STATE

DURING MY TERM? • While moving out of Massachusetts does not automatically void a notary public commission, notaries should be aware that they may notarize documents only within the boundaries of the Commonwealth.

HOW DO I RENEW MY NOTARY COMMISSION?

• A renewal application will be mailed to you automatically from the Public Records Division in the Office of the Secretary of the Commonwealth four weeks before your term is due to expire. The application must be completed and returned directly to the Governor's Council. The applicant's name will then be submitted to the governor for re-appointment, with the advice and consent of the Council. Once appointed, the notary must take the oaths of office for the new appointment in order to become valid. *Be certain to notify the Public Records Division at (617) 727-2836 if your address changes during your term to insure that your renewal application reaches you before your commission expires.*

WHAT HAPPENS IF MY COMMISSION EXPIRES BEFORE I HAVE BEEN RE-APPOINTED AND RENEWED MY OATHS? • Massachusetts law prohibits you from continuing to act as a notary public after your current commission has expired. Should you inadvertently notarize a document during this period, the Secretary of the Commonwealth can validate such an act to protect the integrity of your client's document by issuing a validation certificate from the Public Records Division.

WHAT HAPPENS IF I CHANGE MY NAME? • You may continue to use your former name as a notary until your commission expires. If you intend to notarize using your new name, you must register it with the Secretary of the Commonwealth, using a re-registration form which can be obtained from the Public Records Division. Do not notarize any document in your new name until the re-registration certificate is issued to you. If you have notarized documents under your new name prior to receiving this certificate, these notarial acts must be validated by the Secretary of the Commonwealth as noted above.

WHERE CAN I GO FOR MORE INFORMATION? • The statutes governing Massachusetts notaries can be found in the Massachusetts General Laws (M.G.L.).

FOR FURTHER INFORMATION CONTACT:



William Francis Galvin

Secretary of the Commonwealth

Citizen Information Service

One Ashburton Place, Room 1611

Boston, Massachusetts 02108

Telephone: (617) 727-7030 (TDD also)

Toll-free: 1-800-392-6090 (in Mass. only)

Fax: (617) 742-4528

Website: www.state.ma.us/sec/cis

or

Public Records Division

One Ashburton Place, Room 1719

Boston, Massachusetts 02108

Telephone: (617) 727-2836

Fax: (617) 727-5914

Website: www.state.ma.us/sec/pr

